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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Sections of the Cable Television Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

To The Commission:

INITIAL COMMENTS OF TURNER BROADCASTING SYSTEM, INC.

Turner Broadcasting System, Inc ("TBS") hereby files its comments in the above-captioned Notice of Proposed Rulemaking ("NPRM") to implement Sections 623, 612 and 622(c) of the Communications Act of 1934, as amended by the Cable Consumer Protection and Competition Act of 1992 ("1992 Act"). TBS's initial comments will focus narrowly on the overriding issues raised in the NPRM most closely related to basic cable programming. TBS currently operates five national basic cable networks, Cable News Network, Headline News, TBS SuperStation, Turner Network Television, and The Cartoon Network, and is a partial owner, and the operator of SportSouth, a regional sports network.[1/] In approaching

[1/]Litigation is currently pending in the United States District Court for the District of Columbia challenging the constitutionality of the rate regulation provisions of the 1992 Act. See Time Warner Entertainment Company, L.P. v. Federal Communications Commission, Civ. Act. Nos. 92-2494 et al. (D.D.C.). In submitting these comments, TBS reserves expressly and does not waive its constitutional rights on these issues. Since we recognize (continued...)

its extraordinary challenge in implementing the rate regulation provisions of the 1992 Act, the Commission should keep firmly in mind the benefits that basic cable has provided the American consumer, particularly over the past eight years.

1. When Congress passed the Cable Communications Policy Act of 1984, a primary purpose of the Act was to "assure that cable communications provide and are encouraged to provide the widest possible diversity of information sources and services to the public." (47 U.S.C. § 521) The 1984 legislation has been a clear success in meeting that goal.

The number of cable program services has more than doubled since the 1984 Cable Act. Cable systems' expenditures for basic cable programming have risen from $234 million in 1983 to $1.9 billion in 1992 and an estimated $2.2 billion in 1993.[2/]. Statistics aside, any cable viewer in America can tell you that more cable networks exist, and they are a lot better than they used to be.

The results of cable deregulation can be seen every day on the screens of Black Entertainment Television, the Discovery Channel, Arts & Entertainment, Turner Network Television, Cable News Network, the Family Channel, Nickelodeon and a host of other basic cable networks. Viewers clearly have noticed the improvement. That is why basic cable's share of the total U.S. television audience has risen from an 9% share of

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[1/](...continued)
that the Commission must move forward implementing the 1992 Act, we offer these comments to assist in that implementation.

[2/]Paul Kagan and Associates, Cable TV Programming, August 14, 1992 at 2.

viewing in 1983 to a 25% share of viewing today.[3] That this dramatic improvement of cable programming occurred alongside deregulation is no coincidence.

Turner Broadcasting is a clear example of the success of the 1984 Cable Act in promoting programming diversity and improvement. Since deregulation, TBS has launched two new cable networks, TNT and The Cartoon Network -- promoting diversity. And, TBS programming on all of its networks has been allowed to improve. TBS's estimated expenditures on entertainment programming, including sports, grew from $45 million in 1984 to over an estimated $635 million in 1993. Made-for-TNT movies now typically cost $3 to $4 million to produce -- as much if not more than the cost of broadcast movies.

In a recent Roper poll, television viewers cite cable by 47% to 28% for regular broadcast television as having "lots of variety." Cable networks' growth is not just a result of greater cable penetration. From 1984 to 1989, viewing of basic cable networks more than doubled the rate of cable home growth. Since 1988, basic cable viewership growth outstripped cable home growth by 6 times. This growth must be attributed to both the increase in basic cable networks and the increase in original programming provided by basic cable programmers: over a quarter of the highest rated basic cable programs (excluding sports) are original cable productions. For example, premieres of TNT-original movies and miniseries garnered audiences averaging 64 percent higher than non-original programming aired in the same time periods in 1990, 93 percent higher in 1991 and 79 percent higher in 1992.

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[3] NCTA Cable TV Factbook, Oct. 1992 at 5-A.

Despite the higher programming costs which go along with better programming, cost-conscious consumers have benefited. Improved basic cable allows subscribers to decrease their expenditures for pay services and to lower their overall cable bill, and many are. Pay cable penetration has declined for the past three years. And, while basic cable's share of viewing has doubled since 1988, pay networks' share of viewing has declined slightly.

Cable programmers have been able to grow and increase original programming in large measure because of the unique structure of its business when it has been able to fund its investment in programming through a combination of revenue it receives from its customers (cable operators and other distribution systems) and advertising revenues. As will become quite clear from the record that will be created in the Commission's program access proceeding, there is a delicate balance between the economic benefits cable programmers obtain from reach and from advertising revenues. The Commission has now been tasked to monitor and regulate one prong of that balance as rate regulation will inevitably affect the revenues programmers obtain from their customers. In regulating basic rates, the Commission should not inadvertently squelch the innovation and growth of the diversity provided by cable programming services.

It is both sound public policy and the directive of the 1992 Cable Act that the public should obtain more, not less, programming. The existence of Section 19 of the 1992 Cable Act underscores this intention of Congress.[4/] It would be ironic indeed if, through

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[4/]We do not believe that Section 19 is either wise or necessary public policy, and that in the final analysis, when fleshed out by regulations may even be unconstitutional. Nonetheless, its passage demonstrates a policy preference by Congress.

inadvertent or overly heavy-handed regulation under Section 3, the Commission would drain off much of the benefits that millions of consumers that live outside of major television markets are supposed to receive through obtaining access through cable programming through alternate distribution means.

2. As members of NCTA, we are aware of the contours of the proposal submitted today in the NCTA's comments in this rulemaking. We believe that the NCTA proposal represents a reasonable balancing and effectuates the fundamental interests underlying Section 3, while protecting the consumers' interests in investment in, and creation of, diverse programming.

Specifically, we urge the Commission to adopt the proposal that permits cable systems to directly pass through increases in programming costs without regard to the effect on any benchmarks or "penalty" under the regulatory scheme adopted. Without such a safety valve, rate regulation will inevitably reduce the dollars available for quality enhancement of existing programming and for new programming choices.

To the degree necessary, we will comment in future rounds in this proceeding on other proposals that might be put forth in the initial rounds of comments, viewing them through the prism of a basic cable programmer who provides, and desires to continue to provide, varied, original and quality programming services to the public. We are concerned that if a system of benchmarking were implemented that contained low ceilings, programming would ultimately suffer at the expense of other capital needs and the ultimate losers would be cable subscribers. We would hope that the Commission has similar concerns and also desires to avoid such a result.

Respectfully submitted,

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Date: January 27, 1993

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